

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 886 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

JAYESHBHAI JAYANTIBHAI MANIAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 886 of 2004
MR AJ SHASTRI for Petitioner No. 1
MR SS PATEL, LD. APP for Respondent No. 1
..... for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 26/10/2004

ORAL JUDGMENT

Heard Mr.A.J. Shastri, learned counsel appearing
for the petitioner and Mr.S.S. Patel, ld. APP,

appearing on behalf of respondent no.1-State.

2(i) Having considered the reasons assigned by the ld.Chief Judicial Magistrate, Surendranagar, while dealing with and disposing of the applications at Exh.29 in Criminal Case No.348 of 2002, Exh.24 in Criminal Case No.477 of 2002 and again at Exh.24 in Criminal Case No.478 of 2002, whereby the ld. Chief Judicial Magistrate rejected the request to consolidate all the three cases and to try them as one single case, on the ground that four different cheques were given in one single transaction and merely because the dates of the respective cheques are different, separate prosecutions have been instituted.

2(ii) The ld.Chief Judicial Magistrate, after hearing the parties, dismissed all the applications, stating that there is no scope causing prejudice to the accused and all the three are distinct offences; on the contrary, it may create some confusion, if the trial is conducted in a consolidated manner. The reasons assigned by the ld.Chief Judicial Magistrate are legal and convincing. This decision of the ld.Chief Judicial Magistrate of 4th February, 2004, was challenged by way of filing Criminal Revision Application before the Sessions Court, Surendranagar, and the ld.Sessions Judge, Surendranagar, while dealing with three different Revision Applications, confirmed the orders passed by the ld.Chief Judicial Magistrate and dismissed all the three Revision Applications.

3. The petitioner by invoking the jurisdiction of this Court under Section 482 of the Criminal Procedure Code (for short 'the Code') has challenged the findings recorded by the ld.trial Judge and the ld.Sessions Judge. As the second Revision Application is barred, it seems that the petitioner has adopted this mode to get the impugned orders set aside. According to the Court, the case of the petitioner cannot be said to be a rare or an exceptional case where this Court should rush to rescue even after rejection of the Revision Applications on merit. Only in a given case, such powers can be exercised.

4. The attention of this Court is drawn to the provision of Section 219 of the Code and Mr.A.J. Shastri, learned counsel appearing for the petitioner, submitted that it was possible for the ld.Sessions Judge to issue appropriate directions. The Court would like to quote relevant provision of Section 219 of the Code, which is as under :

"Section 219 : Three offences of same kind within year may be charged together :-(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial or for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal code (45 of 1860) or of any special or local laws :

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

5. The proviso is read closely and in view of the scheme of Section 138 of the Negotiable Instrument Act, there is ample scope of causing prejudice to the petitioner, if all the cases are tried jointly or in a consolidated manner as a single trial. The prosecution under Section 138 of the Negotiable Instruments Act can be said to be a prosecution under a special law and a distinct separate offence and, therefore, it falls out as an exception of the scheme envisaged under Section 219 of the Code. It is true that the ld.Sessions Judge could have directed the ld.Chief Judicial Magistrate to see that all the three cases are conducted in one Court and for convenience of the parties, the date of hearing of the case be kept on same day and this would save the precious time of the Court as well as of the litigant. This part be taken care of administratively by the ld.Sessions Judge and for that no formal direction is required to be issued by the Court when the orders of both the lower Courts are found in accordance with law. It is open for the petitioner to approach the ld. Chief Judicial Magistrate for the purpose.

6. With above observations and directions, accepting

the resistance placed by the ld. APP, I do not find any merit in the present petition and the same is hereby dismissed.

(C.K. Buch, J.)

Aakar